

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JOHNATHAN WILLIAM MIKULA,
CHRISTIAN FERNANDEZ, AMIT
RAJ BERI, SWAY ENERGY
CORPORATION, AVTAR SINGH
DHILLON, EMERALD HEALTH
PHARMACEUTICALS INC., and
JAMES M. DEMESA

Defendants.

Case No. 2:22-cv-7096

**CONSENT TO ENTRY OF FINAL
JUDGMENT BY SWAY ENERGY
CORPORATION**

1 1. Defendant Sway Energy Corporation f/k/a Elegance Brands, Inc.
 2 (“Defendant”) waives service of a summons and the complaint in this action, enters a
 3 general appearance, and admits the Court’s jurisdiction over Defendant and over the
 4 subject matter of this action.

5 2. Without admitting or denying the allegations of the complaint (except as
 6 to personal and subject matter jurisdiction, which Defendant admits), Defendant
 7 hereby consents to the entry of the final Judgment in the form attached hereto (the
 8 “Final Judgment”) and incorporated by reference herein, which, among other things:

- 9 (a) permanently restrains and enjoins Defendant from violations of
 10 Sections 5 and 17(a) of the Securities Act of 1933 (“Securities
 11 Act”) [15 U.S.C. §§ 77e and 77q(a)] and Section 10(b) [15 U.S.C.
 12 § 78j(b)] of the Securities Exchange Act of 1934 (“Exchange Act”)
 13 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and
- 14 (b) orders Defendant to pay a civil penalty in the amount of \$776,932
 15 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and
 16 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

17 3. Defendant acknowledges that the civil penalty paid pursuant to the Final
 18 Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a)
 19 of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
 20 distribution is made, the civil penalty shall be treated as a penalty paid to the
 21 government for all purposes, including all tax purposes. To preserve the deterrent
 22 effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction
 23 of any award of compensatory damages in any Related Investor Action based on
 24 Defendant’s payment of disgorgement in this action, argue that it is entitled to, nor
 25 shall it further benefit by, offset or reduction of such compensatory damages award
 26 by the amount of any part of Defendant’s payment of a civil penalty in this action
 27 (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty
 28 Offset, Defendant agrees that it, shall, within 30 days after entry of a final order

1 granting the Penalty Offset, notify the Commission's counsel in this action and pay
2 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as
3 the Commission directs. Such a payment shall not be deemed an additional civil
4 penalty and shall not be deemed to change the amount of the civil penalty imposed in
5 this action. For purposes of this paragraph, a "Related Investor Action" means a
6 private damages action brought against Defendant by or on behalf of one or more
7 investors based on substantially the same facts as alleged in the Complaint in this
8 action.

9 4. Defendant agrees that it shall not seek or accept, directly or indirectly,
10 reimbursement or indemnification from any source, including but not limited to
11 payment made pursuant to any insurance policy, with regard to any civil penalty
12 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether
13 such penalty amounts or any part thereof are added to a distribution fund or otherwise
14 used for the benefit of investors. Defendant further agrees that it shall not claim,
15 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or
16 local tax for any penalty amounts that Defendant pays pursuant to the Final
17 Judgment, regardless of whether such penalty amounts or any part thereof are added
18 to a distribution fund or otherwise used for the benefit of investors.

19 5. Defendant waives the entry of findings of fact and conclusions of law
20 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

21 6. Defendant waives the right, if any, to a jury trial and to appeal from the
22 entry of the Final Judgment.

23 7. Defendant enters into this Consent voluntarily and represents that no
24 threats, offers, promises, or inducements of any kind have been made by the
25 Commission or any member, officer, employee, agent, or representative of the
26 Commission to induce Defendant to enter into this Consent.

27 8. Defendant agrees that this Consent shall be incorporated into the Final
28 Judgment with the same force and effect as if fully set forth therein.

1 9. Defendant will not oppose the enforcement of the Final Judgment on the
2 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of
3 Civil Procedure, and hereby waives any objection based thereon.

4 10. Defendant waives service of the Final Judgment and agrees that entry of
5 the Final Judgment by the Court and filing with the Clerk of the Court will constitute
6 notice to Defendant of its terms and conditions. Defendant further agrees to provide
7 counsel for the Commission, within thirty days after the Final Judgment is filed with
8 the Clerk of the Court, with an affidavit or declaration stating that Defendant has
9 received and read a copy of the Final Judgment.

10 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims
11 asserted against Defendant in this civil proceeding. Defendant acknowledges that no
12 promise or representation has been made by the Commission or any member, officer,
13 employee, agent, or representative of the Commission with regard to any criminal
14 liability that may have arisen or may arise from the facts underlying this action or
15 immunity from any such criminal liability. Defendant waives any claim of Double
16 Jeopardy based upon the settlement of this proceeding, including the imposition of
17 any remedy or civil penalty herein. Defendant further acknowledges that the Court's
18 entry of a permanent injunction may have collateral consequences under federal or
19 state law and the rules and regulations of self-regulatory organizations, licensing
20 boards, and other regulatory organizations. Such collateral consequences include, but
21 are not limited to, a statutory disqualification with respect to membership or
22 participation in, or association with a member of, a self-regulatory organization. This
23 statutory disqualification has consequences that are separate from any sanction
24 imposed in an administrative proceeding. In addition, in any disciplinary proceeding
25 before the Commission based on the entry of the injunction in this action, Defendant
26 understands that it shall not be permitted to contest the factual allegations of the
27 complaint in this action.

28 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.

1 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a
2 defendant or respondent to consent to a judgment or order that imposes a sanction
3 while denying the allegations in the complaint or order for proceedings," and "a
4 refusal to admit the allegations is equivalent to a denial, unless the defendant or
5 respondent states that it neither admits nor denies the allegations." As part of
6 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i)
7 will not take any action or make or permit to be made any public statement denying,
8 directly or indirectly, any allegation in the complaint or creating the impression that
9 the complaint is without factual basis; (ii) will not make or permit to be made any
10 public statement to the effect that Defendant does not admit the allegations of the
11 complaint, or that this Consent contains no admission of the allegations, without also
12 stating that Defendant does not deny the allegations; and (iii) upon the filing of this
13 Consent, Defendant hereby withdraws any papers filed in this action to the extent that
14 they deny any allegation in the complaint. If Defendant breaches this agreement, the
15 Commission may petition the Court to vacate the Final Judgment and restore this
16 action to its active docket. Nothing in this paragraph affects Defendant's: (i)
17 testimonial obligations; or (ii) right to take legal or factual positions in litigation or
18 other legal proceedings in which the Commission is not a party.

19 13. Defendant hereby waives any rights under the Equal Access to Justice
20 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other
21 provision of law to seek from the United States, or any agency, or any official of the
22 United States acting in his or her official capacity, directly or indirectly,
23 reimbursement of attorney's fees or other fees, expenses, or costs expended by
24 Defendant to defend against this action. For these purposes, Defendant agrees that
25 Defendant is not the prevailing party in this action since the parties have reached a
26 good faith settlement.

27 14. In connection with this action and any related judicial or administrative
28 proceeding or investigation commenced by the Commission or to which the

1 Commission is a party, Defendant (i) agrees to appear and be interviewed by
2 Commission staff at such times and places as the staff requests upon reasonable
3 notice; (ii) will accept service by mail or facsimile transmission of notices or
4 subpoenas issued by the Commission for documents or testimony at depositions,
5 hearings, or trials, or in connection with any related investigation by Commission
6 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of
7 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives
8 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil
9 Procedure and any applicable local rules, provided that the party requesting the
10 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-
11 prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction
12 over Defendant in any United States District Court for purposes of enforcing any
13 such subpoena.

14 15. Defendant agrees that the Commission may present the Final Judgment
15 to the Court for signature and entry without further notice.

16 16. Defendant agrees that this Court shall retain jurisdiction over this matter
17 for the purpose of enforcing the terms of the Final Judgment.

19 Dated: September 12, 2022

Sway Energy Corporation f/k/a Elegance
Brands, Inc.

21
22 By: Amit Raj Beri

24 On September 12, 2022, Amit Raj Beri, a person known to me, personally
25 appeared before me and acknowledged executing the foregoing Consent.

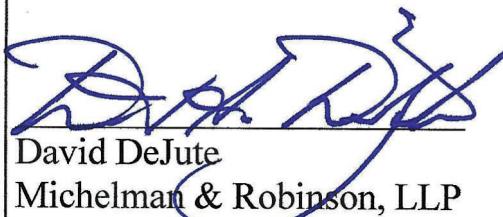
Australian Passport exp 04 APR 2027



CONSENT

27 Notary Public
28 Commission expires:

1 Approved as to form:

2 
3 David DeJute
4 Michelman & Robinson, LLP
5 10880 Wilshire Blvd, 19th Floor
6 Los Angeles, CA 90024
7 Attorney for Defendant

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